

Title	<b>Appellate Procedure: Designation and Preparation of the Record</b> (amend Cal. Rules of Court, rules 4, 5 and 5.1)
Summary	This proposal would amend rules 4, 5, and 5.1 to (1) require that parties include in their designation of the record the date the notice of appeal was filed, and (2) to establish a new procedure that a party who is trying to use an appendix in lieu of a clerk's transcript could use to obtain copies of exhibits held by another party.
Source	Appellate Advisory Committee Justice Joyce L. Kennard, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p>The amendments proposed in this invitation to comment address two separate issues: (1) identifying the date the notice of appeal was filed in designations of the record; and (2) obtaining copies of exhibits held by another party for use in an appendix.</p> <p><i>Date of notice of appeal in designation of the record</i> In cases in which multiple appeals arise from the same trial, when a trial court receives a notice designating the record on appeal, it is sometimes difficult for the court to identify the particular appeal for which that designation was filed. This difficulty causes delay in preparation of the record.</p> <p>The Appellate Advisory Committee proposes that rules 4, 5, and 5.1 be amended to require that the party designating the record provide the date on which the notice of appeal was filed. This information will make it easier for the trial court to correctly identify the appeal in which the designation is being filed.</p> <p><i>Obtaining copies of exhibits held by another party</i> Under rule 5.1, which sets out the procedure for a party to prepare an appendix instead of a clerk's transcript for the record in an appeal, a party can include in its appendix copies of exhibits from the trial court proceeding (see subdivisions (b)(1)(B), (b)(3)(B), and (b)(5)). Sometimes, however, the superior court does not retain an exhibit but returns it to one of the parties. Another party who is trying to put together an appendix for an appeal may have difficulty obtaining a copy of that exhibit to include it in the appendix.</p> <p>Rule 5, which sets out the procedure for the superior court clerk to</p>

prepare a clerk's transcript, has a provision to address situations in which exhibits are held by a party. Rule 5(a)(5) provides that, when a party has designated an exhibit for inclusion in the clerk's transcript, the party who has that exhibit has a duty to deliver the exhibit to the superior court clerk. However, there is currently no equivalent procedure that parties can follow when they need an exhibit for an appendix.

The Appellate Advisory Committee proposes that rule 5.1 be amended to establish a new procedure that a party preparing an appendix could use to request an exhibit from another party. The party possessing the exhibit would be required to deliver that exhibit to either the requesting party or the Court of Appeal.

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Attachments

Rules 4, 5, and 5.1 of the California Rules of Court would be amended, effective January 1, 2005 to read:

**Rule 4. Reporter's transcript**

**(a) Notice**

(1)–(3) \* \* \*

(4) A notice designating a reporter's transcript must state the date the notice of appeal was filed and specify the date of each proceeding to be included in the transcript, and may specify portions of designated proceedings that are not to be included.

\* \* \*

**Rule 5. Clerk's transcript**

**(a) Notice of designation**

(1)–(3) \* \* \*

(4) A notice designating a clerk's transcript must state the date the notice of appeal was filed and identify each designated document by its title and filing date or, if the filing date is not available, the date it was signed. The notice may specify portions of designated documents that are not to be included in the transcript. For minute orders or instructions, it is sufficient to collectively designate all minute orders or all minute orders entered between specified dates, or all written instructions given, refused, or withdrawn.

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**Rule 5.1 Appendix instead of Clerk's Transcript**

**(a) Notice of election**

(1) Within 10 days after the notice of appeal is filed, any party electing to proceed by an appendix under this rule instead of by the clerk's transcript under rule 5 must serve and file a notice of election in the superior court. The notice must state the date the notice of appeal was filed. This rule then

governs unless the superior court orders otherwise on a motion served and filed within 10 days after the notice of election is served.

**(b) Contents of appendix**

(1)–(5) \*\*\*

(6) If a party preparing an appendix wants that appendix to contain a copy of an exhibit that the superior court has returned to another party, the party must first attempt to obtain the exhibit from the party possessing it. If that attempt is not successful, the party may serve and file a notice in the reviewing court specifying the exhibit by number or letter and directing the party possessing the specified exhibit to promptly deliver it to either the requesting party or to the reviewing court. The party possessing the exhibit must promptly comply with the notice. If the party possessing the exhibit sends the exhibit to the requesting party, the requesting party must promptly copy the exhibit and return it.

~~(6)~~ (7) A respondent's appendix may contain any document that could have been included in the appellant's appendix or a joint appendix.

~~(7)~~ (8) An appellant's reply appendix may contain any document that could have been included in the respondent's appendix.

(c)–(f) \*\*\*